



Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Via WebEx Videoconference
Thursday, June 2, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard – Chair
Troy Booher –
Emeritus Member
Jacqueline Carlton – Guest
Lisa Collins
Carol Funk
Tyler Green
Amber Griffith
Michael Judd –
Recording Secretary

Judge Gregory Orme
Judge Jill Pohlman
Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine –
Vice Chair
Scarlet Smith
Nick Stiles – Staff
Doug Thompson – Guest
Mary Westby

EXCUSED

Patrick Burt

1. Action: Chris Ballard
Approval of May 2022 Minutes

The committee reviewed the May 2022 minutes and did not note any needed changes or corrections.

Following that review, Judge Pohlman moved to approve the May 2022 minutes as circulated. Lisa Collins seconded that motion, and it passed without objection by unanimous consent.

2. **Action:** **Chris Ballard**
Rule 14

The committee has already voted to approve the proposed changes to Rule 14, which recognize the option to file a cross-petition in administrative matters. In March, the proposed changes were circulated for public comment, and no public comments were received.

In light of the absence of public comment, Mary Westby moved to recommend Rule 14 to the Utah Supreme Court for publication. Judge Orme seconded that motion, and it passed without objection by unanimous consent.

3. **Action:** **Chris Ballard** **Judge Pohlman**
Rule 4 **Nathalie Skibine** **Mary Westby**
Clark Sabey

The committee has organized a subcommittee to identify an appropriate deadline for a request to reinstate the time to appeal. Chris Ballard opened the committee's return to discussion of Rule 4 by noting that the subcommittee had reviewed past minutes to identify whether this issue was taken up following the Utah Supreme Court's request for consideration of this rule in *Ralphs v. McClellan*, 2014 UT 36, 337 P.3d 230. The committee did in fact take up this issue, in September 2014, but it opted not to recommend any deadline. As the subcommittee understands it, the consensus, at that time, was that motions to reinstate a period for appeal were being filed in a timely manner. This proposed change has now returned to the committee because that no longer appears to be the case. What's more, in its opinion, the *Ralphs* court suggested that without a deadline in the rule, a request to reinstate an appeal cannot be denied as untimely, no longer how late it arrives.

Several committee members and one guest expressed reservations with or opposition to the proposed changes. Nathalie Skibine, a subcommittee member, indicated that if the rule *were* to include a deadline, the deadline now being discussed has a major change that she favors: it adds a "reasonableness" backstop to the one-year limitation.

Doug Thompson expressed concern that the proposed rule is ambiguous about what triggers a defendant's knowledge, and he stated that he remains opposed to the proposed rule change. Even after reviewing the most recent revisions, his general view remains the same: the rule may, for some, constitute a deprivation of a constitutional right, and our rules should be very accommodating to defendants in such circumstances. Mr. Thompson added that he does not believe any benefits to the court system (by way of

efficiency, for example) will be sufficient to outweigh the danger of depriving a defendant of a right to appeal. Emily Adams added her voice to Mr. Thompson's and Ms. Skibine's, reiterating that she does not believe that the rule needs a deadline at all.

Mr. Ballard responded to Mr. Thompson's first concern by saying that, as he understands it, the discovery rule now contained in the rule is based on standard language. He added that the "backstop" for reasonableness, after the one-year deadline has passed, adequately addresses concerns about the application of the rule to *pro se*, incarcerated defendants.

Ms. Westby offered that, in her view, the proposed rule fairly addresses the real outliers, because it gives defendants a chance to make a showing of reasonableness. Clark Sabey stated that while risks of collateral litigation may cut slightly against the changes, he ultimately agrees with Ms. Westby's position.

Following that discussion, Ms. Westby moved to approve the rule as amended, as reflected on the screen at the committee's meeting. Mr. Sabey seconded that motion, and it passed by majority consent, with three objections noted. Ms. Adams, Ms. Skibine, and Ms. Quist object to the amendment, and they further object conditionally, believing that the rule, as now amended, should sent out again for comment.

The committee considered whether the proposed amendment will be recirculated for public comment. Nick Stiles stated that proposed rules that undergo this level of change are typically sent out again for public comment. Mr. Ballard asked whether the committee can recommend recirculation. Mr. Stiles said that it can, and the committee did so.

**4. Action:
Rule 19**

Stan Purser

Mr. Purser reintroduced the committee to the proposed changes to Rule 19, beginning with proposed changes to certificate-of-compliance requirements, which largely track those found in Rule 24.

Ms. Westby led the committee in a discussion of the 30-day response timing contained in the proposed amendment, and Ms. Westby added that it may make sense to add language recognizing an appellate court's ability to transfer issues raised under Rule 19 to the district court, as that would allow the rule to reflect current practice.

The committee then considered whether a mandatory response to a petition filed under Rule 19 is necessary at all. Can, for example, an appellate court

dismiss such a petition without any response? Or could the rule be made more efficient if no response were needed unless and until the court calls for one? The committee spent a significant amount of time reworking the proposed amendment to incorporate a substantial conceptual change to the response and timing requirements, in accordance with those questions.

Following that discussion, Michelle Quist moved to accept the changes addressed in section (g), as shown on the screen at the committee's meeting. Carol Funk seconded that motion, and it passed without objection by unanimous consent.

The committee then discussed replacing references to "extraordinary writ" to "extraordinary relief." Mr. Sabey suggested that the rule clarify that an appellate court can deny petition without a response but cannot grant it without a response. The committee discussed additional possible changes to the rule, as well as page and word limitations.

After that discussion, the committee agreed that Ms. Westby would take a pass at revising the disposition section, while committee members and staff would work to perform other clean-up.

Judge Pohlman moved, accordingly, to table discussion of Rule 19 and to return to discussion of the rule at the committee's next meeting. Ms. Quist seconded that motion, and it passed without objection by unanimous consent.

**5. Action:
Rule 50**

Carol Funk

Proposed amendments to Rule 50 would make a procedural change to the process for certiorari petitions. Carol Funk introduced those proposed amendments, and she encouraged the committee to consider the changes, which she believes will promote efficiency. Mr. Sabey noted that he had lodged previous concerns about delay associated with the rule change, but that he has come around to the proposal and believes it's a good idea. The ultimate question facing the committee, as Mr. Sabey sees it, is how many petitions the Court will feel comfortable denying without seeking a response. If there are a substantial number of petitions in that category, these changes will likely prove very useful.

The committee discussed how to best handle any potential delays associated with this new mechanism. Mr. Sabey offered to discuss with the Utah Supreme Court the timing associated with voting on cert petitions, which is driven by internal calendaring.

After discussion, the committee expressed a strong preference for the first of the two options identified by Ms. Funk. Tyler Green raised an issue that the committee discussed at some length: Should the rule *bar* parties from filing a

response before permission is granted by the court? Mr. Sabey noted that such a prohibition is built into our rules already, in other, potentially analogous rules. The committee will return to Rule 50 at its next meeting, and Mr. Sabey and Ms. Funk will discuss potential refinements in the meantime.

6. Action: Chris Ballard
Rule 22 – Juneteenth Holiday

The committee opted to reserve discussion of Rule 22 until its next meeting.

7. Discussion: Chris Ballard
Old/New Business

Mr. Ballard proposed that the committee follow its historic practice of forgoing its July and August meetings. There were no objections. Mr. Ballard announced that the committee will plan on that approach, absent any need for an emergency meeting.

Mr. Ballard also announced that when the committee meets again in September, it plans to conduct that meeting under a hybrid approach, with an in-person meeting and the option for participants to join remotely.

8. Adjourn

Following that discussion, Ms. Funk moved to adjourn. Mr. Purser seconded, and there were no objections. The committee's next meeting will take place on September 1, 2022.